

CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY

Meeting Date: June 28, 2011

***Consideration and Approval of Amendment to Regulations for the Bond Program
Pertaining to Small Business Assistance Fund (SBAF) fees and Public Agencies***

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Summary. Staff requests Board approval to file permanent regulations to amend a section of the California Pollution Control Financing Authority (“CPCFA” or the “Authority”) regulations pertaining to waiving the Small Business Assistance Fund (SBAF) fees for Public Agencies. Upon approval, staff will file the regulations with the Office of Administrative Law (OAL).

Background. During the late 1970’s and early 1980’s, the U.S. Small Business Administration (SBA) administered a special pollution control loan guarantee program for small businesses. The program offered SBA loan guarantees for federally issued tax-exempt bonds. The SBA discontinued the program in 1981, which left small businesses inadequate resources for securing cost-effective tax-exempt financing.

In 1985, the SBAF was established to fill a void from the discontinuation of the SBA program, and to offset certain costs of issuance and letter of credit fees associated with the issuance of tax-exempt bonds issued on behalf of small businesses. A small business is defined as 500 employees or less. When the SBAF program was instituted, public agencies were not a “participating party” in CPCFA’s private activity bond transactions.

In late 2009, CPCFA’s authorizing statute (CA Health and Safety Code) was amended to include a public agency as a participating party in CPCFA’s private activity bond transactions. Per section 44509 of CA Health and Safety Code, “public agency” means any state agency, board or commission, any county, city and county, city, regional agency, public district, or other political subdivision. Under current CPCFA regulations, a public agency is not eligible to receive a SBAF subsidy but is, as an applicant, obligated to pay into the SBAF program. The proposed regulations would exempt a public agency from paying SBAF fees, while preserving the original intent of the fees, which is to charge large businesses a fee that is then used to support CPCFA programs that benefit small businesses.

Staff has recently been apprised of at least one public agency that will be a co-applicant in a private activity bond financing with regard to a water desalination project. Under current CPCFA regulations, this public agency would be required to pay a SBAF fee because it does not meet the small business definition. For further clarification, if a public agency and a large business are co-applicants for a private activity bond transaction, a SBAF fee will be collected.

Regulation Change. Section 8035(a) of the regulations will be amended to read as follows (change is underlined):

§ Section 8035(a) “The Authority shall charge an applicant, who is not a public agency or a small business as defined in Section 8020, a fee in addition to the fees required by Sections 8033 and 8034. The additional fee shall fund the Small Business Assistance

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Fund (SBAF). The amount of the fee shall be sixty-six one-hundredths of one percent (.0066) of the face value of any tax exempt bonds issued and three tenths of one percent (.003) of the face value of any taxable bonds issued; provided that in connection with the issuance of taxable bonds for which the .003 fee is charged, if such taxable bonds are refinanced with or converted to tax exempt bonds, the applicant shall pay an additional fee for deposit into the Small Business Assistance Fund in the amount of thirty- six one-hundredths of one percent (.0036) of the face value of such taxable bonds. In the case of refunding or conversion of bonds, the fee percentage applicable on the date the original bonds were issued will be used to determine if additional SBAF fees are collectable. If the company did not pay a SBAF fee originally, the current fee percentage will apply to refundings or conversions. If federal tax law or other legal provisions prevent the imposition of the above fees, each fee shall be the maximum that can legally be charged.”

Regulatory Process. After Authority approval to amend the existing regulations, a regular rulemaking package will be filed with the Office of Administrative Law (OAL).

To begin the regular rulemaking process, the Authority will prepare a notice of proposed rulemaking to be published in the California Regulatory Notice Register, mail the notice to interested parties, and post the notice, text, and initial statement of reasons on our website. The Notice starts a 45-day public comment period. After that time, staff will review and respond to any comments and present the final form of the regulations to the Authority for approval. If there are substantial modifications, the revised regulations must be published in the Register again for a 15-day public comment period before Authority approval. After Authority approval, a regular rulemaking file is submitted to OAL, and OAL has 30 working days to review the regulations for compliance with the Administrative Procedure Act and the Authority’s statute. Once OAL approves the regulations, they are filed with the Secretary of State and become effective 30 days later.

Timeline. The estimated schedule is outlined below.

Regular Regulations

July 19, 2011	The <i>Rulemaking File</i> and Notice of Publication are filed with the Office of Administrative Law (OAL). The Notice of Proposed Regulatory Action is issued.
July 29, 2011	OAL publishes Notice and 45-day public comment period begins.
September 12, 2011	Public comment period regarding proposed regulations ends.
September 13, 2011	Public Hearing Scheduled.
September 14, 2011	Deliver regular rulemaking package (Certificate of Compliance) to OAL for 30-day review*
October 14, 2011	OAL issues Approval of Certificate of Compliance and files regulations with the Secretary of State.
October 14, 2011	Regulations become effective.

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*If public comments are received that warrant substantial modifications to the proposed regulations, then the process will be lengthened to accommodate a 15-day comment period as follows:

September 14, 2011	Proposed regulation amendments are modified and Notice Proposed Changes is issued to initiate a 15-day comment period.
September 29, 2011	15-day comment period ends.
September 30, 2011	Deliver regular regulation package to OAL for 30-day review.
October 31, 2011	OAL issues Approval of Certificate of Compliance and files regulations with the Secretary of State. Regular regulations become effective.

Recommendation. Staff recommends adoption of a resolution to amend regulations concerning SBAF fees for the Bond Program and to authorize staff to undertake regular rulemaking proceedings and other actions related to CPCFA bond program regulation revisions.

**RESOLUTION OF THE CALIFORNIA POLLUTION CONTROL FINANCING
AUTHORITY APPROVING REGULATIONS AND AUTHORIZING REGULAR
RULEMAKING PROCEEDINGS AND OTHER ACTIONS RELATED
THERE TO**

June 28, 2011

WHEREAS, the California Pollution Control Financing Authority (the "Authority") is authorized by California Health and Safety Code Sections 44520(a) to adopt regulations to implement and make specific the statutory provisions governing the Authority; and

WHEREAS, the Authority is authorized by California Health and Safety Code Section 44520(b) to adopt regulations relating to small business; and

WHEREAS, the Authority has determined that amendments to the Authority's regulations relating to its General Provisions Relating to Authority Actions set forth in Article 3 of Division 11 of Title 4 of the California Code of Regulations, are necessary to be adopted at this time to administer the Program.

NOW, THEREFORE, BE IT RESOLVED by the California Pollution Control Financing Authority as follows:

Section 1. The proposed form of regulations presented at the June 28, 2011 meeting is hereby approved in substantially the form submitted. The Chair, Executive Director or Deputy Executive Director is hereby authorized, for and on behalf of the Authority, to proceed with filing such regulations with the Office of Administrative Law, with the supporting documentation required by law, for the purposes of adopting regular regulations.

Section 2. The Chair, Executive Director or Deputy Executive Director of the Authority are hereby authorized and directed to take such actions, including making or causing to be made such changes to the regulations as may be required for approval thereof by the Office of Administrative Law, and to execute and deliver any and all documents that they may deem necessary or advisable in order to effectuate the purposes of this resolution.

Section 3. This resolution shall take effect immediately upon its approval.

PROPOSED TEXT OF REGULATIONS

Title 4. Business Regulations

Division 11. California Pollution Control Financing Authority

Article 3. General Provisions Relating to Authority Actions

§ 8035 Small Business Assistance Fund Fees

(a) “The Authority shall charge an applicant, who is not a public agency or a small business as defined in Section 8020, a fee in addition to the fees required by Sections 8033 and 8034. The additional fee shall fund the Small Business Assistance Fund (SBAF). The amount of the fee shall be sixty-six one-hundredths of one percent (.0066) of the face value of any tax exempt bonds issued and three tenths of one percent (.003) of the face value of any taxable bonds issued; provided that in connection with the issuance of taxable bonds for which the .003 fee is charged, if such taxable bonds are refinanced with or converted to tax exempt bonds, the applicant shall pay an additional fee for deposit into the Small Business Assistance Fund in the amount of thirty-six one-hundredths of one percent (.0036) of the face value of such taxable bonds. In the case of refunding or conversion of bonds, the fee percentage applicable on the date the original bonds were issued will be used to determine if additional SBAF fees are collectable. If the company did not pay a SBAF fee originally, the current fee percentage will apply to refundings or conversions. If federal tax law or other legal provisions prevent the imposition of the above fees, each fee shall be the maximum that can legally be charged.”

Note: Proposed changes are underlined.